



MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

Planning Board

TO: Chairperson and Members
Planning Board

DATE: July 29, 2008

FROM: Jorge G. Gomez, AICP
Planning Director

RL for JGG

SUBJECT: **File No. 1878 - Ordinance** - Seasonal rental of single-family homes. An Ordinance of the Mayor and City Commission of the City Of Miami Beach, Florida, amending Chapter 142 of the City Code, "Zoning Districts and Regulations," by amending Division 2, "RS-1, RS-2, RS-3 and RS-4 Single-Family Residential Districts," by adding new Section 142-110 to be entitled "Seasonal Rentals of Single Family Homes;" Providing for Repealer, Nonseverability, Codification, and an Effective Date.

UPDATE

At its June 24, 2008 meeting, the Planning Board requested a revised draft ordinance, shortening the minimum rental time, increasing the number of times per year a home could be rented short-term, and specifying geographic boundaries within which this provision would be applicable. Attached please find a draft ordinance, which for discussion purposes specifies the minimum short term rental period as one week, permits such short term rentals four times per year, and limits such a program to only the RS-1 Single Family Residential zoning district. RS-1 is the City's least dense "estate" zoning district, with a minimum lot size of 30,000 square feet per home. This district is only found on the eastern half of Palm Island, and on the entire length of Star Island.

While staff continues to recommend against liberalization of the single family residential zoning regulations to permit short term vacation rentals, if the Planning Board believes that this policy is warranted, limiting these rentals to the RS-1 "estate" district may help to ensure that the potential negative for negative effects on the surrounding properties associated with such transient usage is minimized.

BACKGROUND

During the discussions over the past year regarding the commercial use of single-family homes that culminated in the adoption of the "Party House" ordinance, the related issue of short term rentals of single family homes was also brought up. Over the past several years, it has come to the attention of the City that certain homeowners were renting their homes out to transient visitors. These rentals have been in various areas of the City, especially on the islands and waterfront areas, and have ranged from one-time incidents all the way to, in some cases, elaborate internet commercial marketing operations. In cases where clear evidence is found, the City has cited the homeowners for operating a commercial use in a residential-only zoning district, and operating a business without a certificate of use or occupational license.

The violations for the commercial use of single family homes, and of short term rental of homes to transient visitors, are based upon the Land Development Regulations (LDR's). The LDR's specify that the only permitted main use within single family residential zoning districts are single family dwellings. No commercial activities are permitted as main uses, and only very limited accessory commercial activities, such as garage sales, and home based business offices, are permitted as uses ancillary and customarily associated with the main use of the home as a single family residence.

The Land Development Regulations do not specifically state the amount of time a single family home in a single family zoning district may be rented for. However, the resort tax section of the City Code specifies that any rental for a time period of less than six (6) months constitutes a transient usage, and must pay resort tax. The Planning Department has used the prohibition on commercial uses within residential districts, and the six month timeframe for resort tax, among other code provisions, to reach the official interpretation of the Code that rentals of less than six (6) months constitute transient, or hotel, occupancy, which are not permitted in single family districts. Planning Department research indicates that this interpretation is common amongst many municipalities nationwide. Staff believes that the interpretation of the Code as explained above is a valid and legal interpretation, as authorized by the City Code, and does have the force of law.

In response to a violation of this nature, a homeowner and another entity have filed suit against the City challenging this restriction. Pursuant to the subsequent mediation efforts of the parties in the subject litigation, at its April 16, 2008 meeting, the City Commission referred to the Planning Board consideration of an ordinance amendment to the Land Development Regulations that would permit the rental of single family homes for minimum periods of 3 – 6 months no more than 3 times per year, subject to such additional regulations as the Planning Board proposes. This is the ordinance before the Board today, which has been prepared by the City Attorney's Office and the Administration, labeled "Seasonal Rental of Single Family Homes".

At the same meeting, the Commission also confirmed its agreement with the Planning Director's Administrative Interpretation 00-2, issued February 29, 2000, that the City's Land Development Regulations prohibit the rental of a single family home for less than six months. Note that a separate proposed amending ordinance before the Planning Board today, and intended to be discussed together with the Short Term Rentals ordinance, would codify the existing interpretation limiting rentals of single family homes to no less than six months. That ordinance amendment, codifying the Planning Director's interpretation, is reviewed under separate cover, and should be recommended for adoption if the Planning Board agrees not to recommend the adoption of the subject ordinance allowing seasonal rentals. If some version of seasonal rentals is recommended, it is also recommended that the LDR's be amended to clarify and state clearly the resulting policy decision.

ANALYSIS

The ordinance amendment under review includes regulations that would allow seasonal rentals, requiring a binding lease for ninety (90) or more consecutive days, no more than three (3) times per year, nor more than one (1) time per month. The ordinance limits rentals to a family or three unrelated persons (excluding domestics), living together as a single housekeeping unit, requires supervision by the owner or a broker or agent, allows the administration to adopt rules and procedures to assist in enforcement, prohibits signs, requires a permit (in a form to be

determined), subjects rentals to resort taxes, and prohibits variances from the section. The ordinance also sets forth enforcement provisions that parallel the recently adopted commercial use ordinance. The ordinance also includes a nonseverability clause, which would require a court to return the ordinance to the City Commission for further review if it finds portions of the ordinance objectionable, instead of severing those parts it approves and striking the remainder.

In researching other jurisdictions' approaches to short term rentals of single family residences, a wide variety of policies are to be found. In certain resort areas, such as mountain ski areas that do not contain a large number of hotels, rentals of homes for vacationers serves an important community need. Other jurisdictions permit some limited rental of homes, to promote tourism or address the economics of homeownership and permit the cost of homes to be partially defrayed through rentals.

However, many more communities appear to have kept to a more conservative approach to residential zoning, and continue to prohibit short term rentals, either explicitly or by interpretation. Many conflicts over short term rentals in residential districts have been reported on in newspapers, and the issue appears especially prevalent in ocean resort states such as Florida and California. Other jurisdictions are confronting the same complaints about short term rentals, such as increased noise and traffic, diminishment of the private residential character of neighborhoods, and also the unfair competition these rentals present to licensed hotel uses elsewhere in the area.

In examining possible policy decisions, the most restrictive approach would be simply to codify the existing prohibition on short term rentals of less than six months. If a liberalization of this policy is desired, the subject ordinance, permitting "seasonal" rentals, which would be characterized as less than six months, but longer than three (3) months, would at least be less problematic than permitting "short-term" rentals of three months or less. In this way, if desired, the restrictive policy in place today could be liberalized, by allowing seasonal rentals of more than three months, under the assumption that these timeframes might not alter the character of neighborhoods to the degree that short-term rentals would.

In almost all the programs examined in other jurisdictions, regardless of the timeframe for rentals allowed, any person owning a home to be rented would be required to first obtain a short term rental license from the City. Such a license application would require additional information about the home and homeowner, such as who is the responsible person, emergency contact numbers, number of bedrooms and parking spaces, etc. Some programs require that the adjacent neighbors be notified in advance regarding such rentals, and be given contact information for the homeowner or responsible person. The licenses are granted subject to a variety of restrictions, such as the number of persons allowed to occupy the house, the requirement for all renter's vehicles to be accommodated with off-street parking spaces on the private property, and even prohibitions on the use of rented homes for parties or gatherings. The homeowner would have to agree to the conditions in writing prior to the issuance of a license. Some programs require the inclusion of such requirements and prohibitions in any lease signed with a short term renter.

This proposed ordinance would attempt to restrict the intensity of any seasonal rentals by limiting rentals to one family or three unrelated persons (excluding domestics), living together as a single housekeeping unit. The ordinance would require supervision by the owner or a broker or agent, and would prohibit signs. Some type of City permit would also be required (in a form yet to be determined). The ordinance would apply in all single family zoning districts citywide.

Planning Department staff has strong reservations about liberalizing the single family zoning regulations of the City of Miami Beach. Staff is concerned about the appropriateness of this type of transient usage in the City's single family residential areas. Questions regarding availability of parking and transportation to serve these transient renters have been raised. To date, much concern has been raised by neighborhood associations and single family residents relative to whether or not permitting transient rentals within the City's single family zoning districts will affect the character of their neighborhoods, and whether it is appropriate to permit such rentals within the City's single family areas.

REVIEW CRITERIA

In accordance with Section 118-163 (3), when reviewing a request for an amendment to these land development regulations, the Board shall consider the following where applicable:

1. **Whether the proposed change is consistent and compatible with the comprehensive plan and any applicable neighborhood or redevelopment plans.**

Partially Consistent – While not explicitly inconsistent with the Comprehensive Plan, relaxing the standards for permitted uses in single family zoning districts to allow transient rentals may be incompatible with policies of the Comprehensive Plan designed to protect the private residential character of these districts.

2. **Whether the proposed change would create an isolated district unrelated to adjacent or nearby districts.**

Partially Consistent – The ordinance is not location specific, and would apply in all single family zoning districts city wide. Certain cities have designated only certain specific single family areas for this type of short term or seasonal rental program.

3. **Whether the change suggested is out of scale with the needs of the neighborhood or the city.**

Consistent – The proposed change would not alter the physical characteristics of single family homes.

4. **Whether the proposed change would tax the existing load on public facilities and infrastructure.**

Partially Inconsistent – The proposed amendment could result in increased demands for city services, as transient usage in single family areas might possibly result in additional activity requiring police, fire, code enforcement and parking enforcement services.

5. **Whether existing district boundaries are illogically drawn in relation to existing conditions on the property proposed for change.**

N/A.

6. **Whether changed or changing conditions make the passage of the proposed change necessary.**

Partially Consistent – While economic conditions have changed over time, resulting in higher property valuations for single family properties, this may also be said to have also resulted in the improvement in the quality and desirability of the City's single family neighborhoods. It is not clear that changed economic conditions warrant the liberalization of single family zoning regulations.

7. **Whether the proposed change will adversely influence living conditions in the neighborhood.**

Inconsistent - The proposed amendment may adversely influence living conditions in our single family neighborhoods, by introducing more transient visitors, who have less of a stake in the continued stability and order of the surrounding neighborhoods. Increased traffic, parking problems, and lack of on-site owner supervision could all become problems.

8. **Whether the proposed change will create or excessively increase traffic congestion beyond the levels of service as set forth in the comprehensive plan or otherwise affect public safety.**

Partially Inconsistent - The proposed change may negatively affect traffic congestion in specific single family neighborhoods, if increased transient usage is permitted.

9. **Whether the proposed change will seriously reduce light and air to adjacent areas.**

Consistent - The proposed change would not reduce light and air.

10. **Whether the proposed change will adversely affect property values in the adjacent area.**

Inconsistent – Property values may be negatively impacted if it is perceived by surrounding property owners that the introduction of transient renters is causing a change in the private, single family residential character of the subject neighborhood.

11. **Whether the proposed change will be a deterrent to the improvement or development of adjacent property in accordance with existing regulations.**

Inconsistent – Adjacent property owners may be reluctant to invest in upgrades and improvements to single family properties if it is perceived that transient renters are causing a change in the private, single family residential character of the subject neighborhood.

12. **Whether there are substantial reasons why the property cannot be used in accordance with existing zoning.**

Inconsistent – Existing regulations permit the use of single family properties for single family dwelling purposes. Properties zoned single family are fully able to be utilized today for their specified purpose, and there is no overriding reason why the existing regulations should be liberalized to permit additional uses not currently permitted.

13. **Whether it is impossible to find other adequate sites in the city for the proposed use in a district already permitting such use.**

Inconsistent – The City of Miami Beach contains numerous other zoning districts that can be used for short term, medium term and long term transient rental uses. The argument that some people can only use single family properties for their vacations or holidays is not valid in a City that contains such a variety of hotel and apartment uses.

STAFF RECOMMENDATION

Staff continues to recommend that the Planning Board recommend that the City Commission NOT APPROVE the subject ordinances as drafted, but rather adopt the codification of the existing interpretation of the Planning Director limiting rentals in single family zoning districts to no less than six months.

JGG\RGL\rgl

c: Gary Held, First Assistant City Attorney
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"SHORT TERM / SEASONAL RENTAL OF SINGLE FAMILY HOMES"

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 142 OF THE CITY CODE, "ZONING DISTRICTS AND REGULATIONS," BY AMENDING DIVISION 2, "RS-1, RS-2, RS-3 AND RS-4 SINGLE-FAMILY RESIDENTIAL DISTRICTS," BY ADDING NEW SECTION 142-110 TO BE ENTITLED "SHORT TERM / SEASONAL RENTAL OF SINGLE FAMILY HOMES;" PROVIDING FOR REPEALER, NONSEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, the Land Development Regulations restrict single-family residential properties to residential and compatible uses; and

WHEREAS, the RS-1, RS-2, RS-3, RS-4 single-family residential districts are designed to protect and preserve the identity, image, environmental quality, privacy, attractive pedestrian streetscapes, and human scale and character of the single-family neighborhoods and to encourage and promote new construction that is compatible with the established neighborhood context; and

WHEREAS, the main permitted uses in the RS-1, RS-2, RS-3, RS-4 single-family residential districts are single-family detached dwellings; and

WHEREAS, hotel uses are not permitted in the RS-1, RS-2, RS-3, and RS-4 districts, and the land development regulations define hotel uses as buildings occupied or intended to be occupied by transient residents; and

WHEREAS, the City Code treats residences leased in the City for less than six consecutive months as transient occupancy; and

WHEREAS, the rental of single-family residential properties in districts zoned RS-1, RS-2, RS-3 and RS-4 ("Single Family Residential Homes") for periods of less than six months and one day ("Seasonal Rentals") is a transient use and therefore prohibited under existing regulations; and

WHEREAS, the City has determined that there is a potential for harm to the "sense of neighborhood" in a single family zoning districts if Seasonal Rentals are permitted without regulations protecting against adverse external effects of such use or prohibited in certain instances; and

WHEREAS, homeowners' sense of community and privacy would be compromised by commercial and transient use of houses in the single family residential districts; and

WHEREAS, homeowners have reasonable expectations of a community of permanent neighbors and homeowners and the privacy such a community entails; and

WHEREAS, the privacy and ambience of such single family residential areas are materially undermined by transient rentals; and

WHEREAS, the values associated with single-family residential areas can only be preserved by very limited and controlled commercial and transient use of residences, if at all; and

WHEREAS, the Planning Department Staff Report contains further history, research and concerns about this issue, which report is adopted as part of the legislative history of this ordinance; and

WHEREAS, while residents are entitled to enjoy the use of their Single Family Residential Homes consistent with applicable regulations in single family residential districts, it is deemed that such uses may exist in single family districts if subject to regulation that would protect the enjoyment, character and value of single family residential neighborhoods and homes, and accordingly, the provisions herein regarding Seasonal Rental of Single Family Homes are hereby adopted.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA:

Section 1. That Section 142-110, "Seasonal Rental of Single Family Homes," of the Miami Beach City Code, is hereby created as follows:

Sec. 142-110. Seasonal Rental of Single Family Homes.

(a) Intent and Purpose:

The Land Development Regulations restrict single-family residential properties to residential and compatible uses. The rental of single-family residential properties in districts zoned RS-1, RS-2, RS-3 and RS-4 for periods of less than six months and one day are not considered as a permitted or accessory use in such districts, unless conducted in accordance with this section.

(b) Regulations:

(b) Regulations:

(1) For properties within the RS-1 Single Family Residential District only, short-term /seasonal rental of single family residential homes shall be deemed a

permitted or accessory use thereof, provided that the following mandatory requirements are followed:

- a. All short-term /seasonal rentals under this section must be pursuant to a binding written lease for seven (7) or more consecutive days. No home may be rented more frequently than four (4) times in any calendar year, nor more than one (1) time per month.
- b. All rentals must be to one family, or a group of not more than three persons (excluding domestics), living together as a single housekeeping unit. This section does not authorize the establishment of rooming houses as defined in section 114-1 in these districts.
- c. All rentals must be supervised by the owner, or a local and licensed real estate broker or agent, who must be available for contact on a twenty-four hour basis, seven days a week, and must have a principal office or residence located within city limits.
- d. The city manager or designee may adopt administrative rules and procedures to assist in the uniform enforcement of this ordinance.
- e. No signs advertising the property for seasonal rental are permitted on the property or abutting right-of-way.
- f. Lessors must obtain a seasonal rental permit, subject to annual review, providing the contact information for the person identified in subsection c above. A permit shall not be issued or renewed if more than two violations on the property of the noise, commercial use or this ordinance were adjudicated within the preceding 18 months.
- g. Lessors are subject to resort taxes for leases under this section.
- h. No variances may be granted from the requirements of this section.

(c) Enforcement:

(1) Violations of this section shall be subject to the following fines. The special master may not waive or reduce fines set by this ordinance.

- a. If the violation is the first violation: \$2,500.00;
- b. If the violation is the second violation within the preceding 18 months: \$7,500.00;
- c. If the violation is the third violation within the preceding 18 months: \$12,500.00;
- d. If the violation is the fourth or greater violation within the preceding 18 months: \$20,000.00.

Fines for repeat violations shall increase regardless of location.

(2) In addition to or in lieu of the foregoing, the City may seek an injunction or impose a prohibition against, or revoke permits issued for, rentals permitted under this section.

(3) Any city police officer or code compliance officer may issue notices for violations of this ordinance, with alternative enforcement as provided in section 1-14 and Chapter 30 of this Code. Violations shall be issued to the homeowner, renter, and/or to any realtor, real estate agent, real estate broker, or any other individual or entity that facilitates the prohibited use. In the event the record owner of the property is not present when the violation occurred, a copy of the violation shall be served by mail on the owner at its mailing address in the property appraiser's records, or on the owner's registered agent.

Section 2. Repealer.

All ordinances or parts of ordinances and all section and parts of sections in conflict herewith be and the same are hereby repealed.

Section 3. Codification.

It is the intention of the City Commission, and it is hereby ordained, that the provisions of this Ordinance shall become and be made part of the Code of the City of Miami Beach, as amended; that the sections of this Ordinance may be re-numbered or re-lettered to accomplish such intention; and that the word "ordinance" may be changed to "section" or other appropriate word.

Section 4. Nonseverability.

This ordinance is not severable, and if any provision hereof is held void or unconstitutional in a final decision by a court of competent jurisdiction, the ordinance shall be returned to the City Commission for reconsideration or clarification.

Section 5. Effective Date.

This Ordinance shall take effect ten days following adoption.

PASSED and ADOPTED this _____ day of _____ 2008.
ATTEST:

MAYOR

CITY CLERK

First Reading:

Second Reading:

Verified By: _____

APPROVED AS TO FORM
AND LANGUAGE, AND
FOR EXECUTION

Jorge G. Gomez, AICP
Planning Director

City Attorney

Date

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